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Land Use Review Committee
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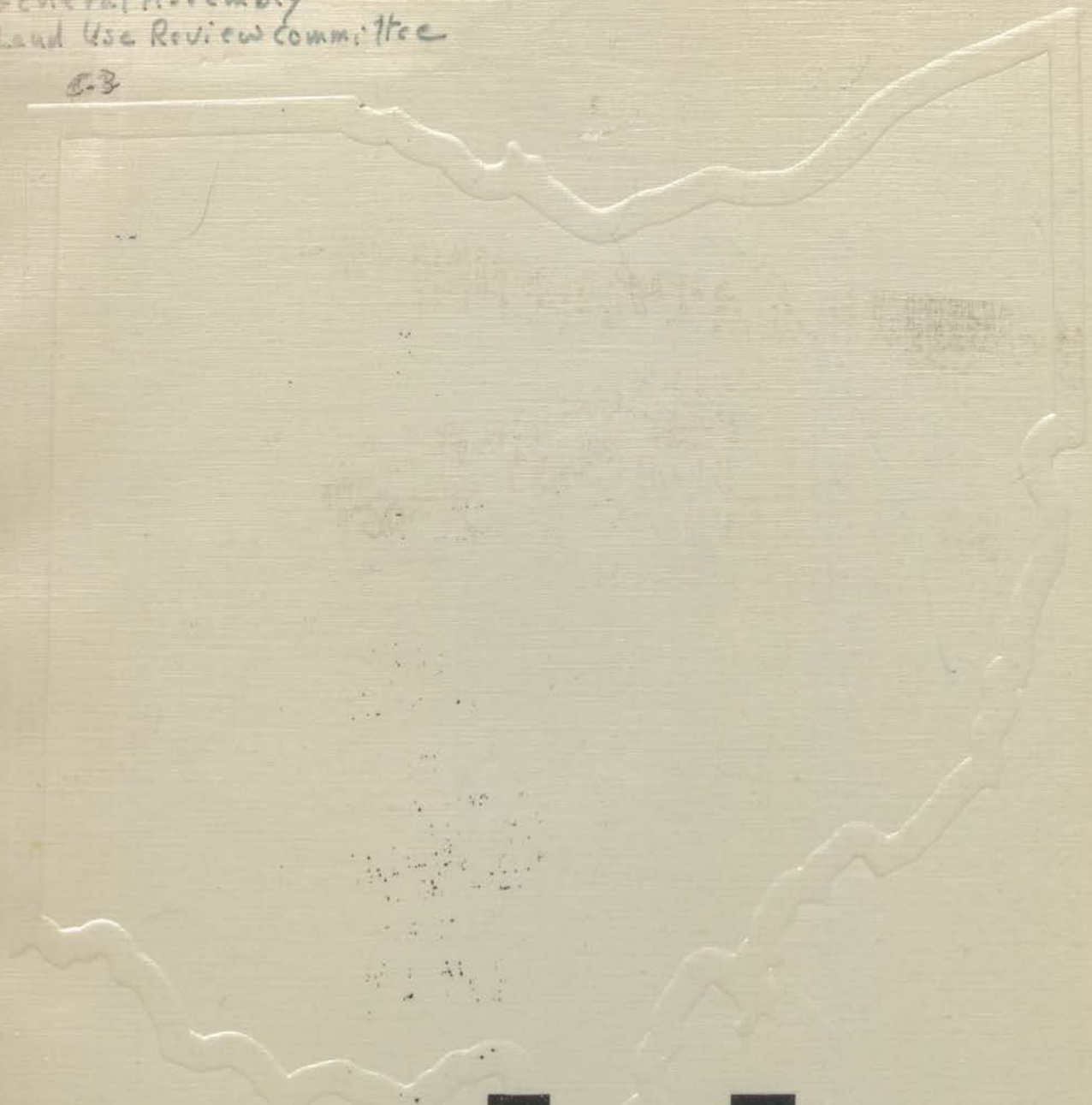

guide

A GUIDE FOR LAND USE LEGISLATION
THE OHIO LAND USE REVIEW COMMITTEE

need for action
improved framework
special goals

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MINORITY REPORT

To the Ohio Land Use Review Committee

The *Final Recommendations* of the Ohio Land Use Review Committee purport to keep land use planning in the hands of local government. In my opinion, this is not the case.

The application of the term "local government", as used in this report and its predecessor, *Overview*, refers to county government. I believe that local government has traditionally referred to the governing bodies of cities, villages, and townships.

As a legislator, you will recognize that we are governed by the Ohio Revised Code as developed within the structure of the Ohio Constitution.

The Constitution, Article x, says, and I quote,

> "The general assembly shall provide by general law for the organization and *Government* of counties and may provide by general law alternate forms of County Government. *No* alternate form of County Government shall become operative in any county until submitted to the electors and approved by the majority".

Some Counties have elected to have an alternative form of Government. Further quoting from Section x of the Ohio Constitution:

> "In case of conflict in the exercise of power granted by such a charter and the exercise of power by a municipality or Township the power of the municipality or Township shall prevail".

The role of the state government in land use planning is especially significant. Under existing practice, the state directly and indirectly affects land use through six major agencies:

Department of Natural Resources
Department of Economic and Community Development
Department of Transportation
Department of Health
Department of Agriculture
Environmental Protection Agency

The *Final Recommendations* propose to give the Governor statutory power to coordinate the policies and plans of these agencies. The legislature would place in the hands of the Governor the responsibility for preparation and adop-

tion of state policies which would affect the major elements of the county-wide plan.

In practice this would mean that the county-wide plan would first be reviewed and commented upon by those coordinated agencies in order to determine whether or not conflicts exist between it and the State plan or policy.

The Final Recommendations say, "In anticipation of seeking state recognition of an adopted county-wide general plan, the commission would submit the proposed plan to state agencies for review and comment.

Crucial to this discussion is the issue of what happens if the county-wide plan does not receive state recognition. For instance, would this result in any loss of state or federal funds for the local community? In short, how essential is it to have state recognition of your county plan. These Recommendations propose that the County-wide general plan be adopted after lengthy review and comment process, by the County-wide Planning Commission.

The County-wide Planning Commission is charged with the responsibility of coordinating land use planning throughout the county. There are some aspects of this Commission which are especially disturbing to me.

For example, the County-Wide Planning Commission, while containing elected officials as members, would still be an appointed body, whose members are designated by the county commissioners. Indeed, the accountability of this body is in jeopardy when its members are not elected to the office which they serve. It appears to me that these Recommendations make the County-Wide Planning Commission a regulatory body rather than an advisory body. In view of the fact that the County-Wide Planning Commission adopts the County-Wide plan, it is my opinion that the committee would be transferring power from elected representatives to an unelected commission.

Comprehensive planning is a process. It is not a form of regulation that can be reduced to a written legal document and utilized as a means of regulation of private property rights under the Ohio Constitution.

Also, in proposing that the state support the operation of the County-Wide Planning Commission with matching funds up to twenty cents per capita but not to exceed fifty percent of the local share, the Committee has proposed the creation of yet another body whose expenses are paid in part by the state to carry out state policies and plans. I don't believe the fiscal ramifications for the state in adop-

ting this recommendation were fully explored by the Committee.

At the township level, the recommendations for change should fool no one. While the recommendations do not seek consolidation of governments, it is accomplished by transfer of duties.

The *Tentaive Recommendations* contained a forthright statement all could read and understand. I quote from the *Tentative Recommendations* (page 10, section 1.8), *"Preparation and Adoption of Township Development Plans.* The County Planning Commission shall be the planning agency for townships, and shall prepare a comprehensive Township Development Plan for townships all or part of which are in Urban Service Areas (see 2.3) for adoption by the Board of Township Trustees upon the finding of the County Planning Commission that it is in conformity with the adopted county-wide General Plan:" This simple statement should have stood.

Overview came back with a complicated, hard-to-read plan for townships.

The Final Recommendations section on townships is a smooth, readable report, but there is no basic change.

Why should a township go through all the pretense of voting on zoning . . . having Township Planning Commissions and a Township Development Plan . . . when it must eventually conform to the county-wide plan. I quote from the *Final Recommendations.* "Recommendation: A township development plan should be consistent with the provisions of an adopted countywide general plan . . . . Townships would participate in the development of the county-wide general plan, and township plans would be consistent with it."

I must reiterate that it is very hard for me to understand how claims can be made that these recommendations provide more power to local government.

The proposal for a State Land Use Commission received such strong opposition it had to be revamped. The *Final Recommendations* has brought it back as a State-Local Government Commission chaired by the Lieutenant Governor with courtesy membership extended to selected citizens and various levels of government. It is a discussion forum but it is still the adjudicatory body settling discrepancies between local and state government. It is unclear to me just what *Recommendations,* which establishes the State-Local Government Commission means by saying

that this commission *shall* "oversee the state recognition of County-Wide general plans". Does this mean that this Commission must approve the County-Wide Plan? If this is true where is local control of land use?

Once you legislate on land use you have to set up the framework for enforcement. With state inspection of private property carrying with it enforcement powers, you will have created a whole new bureaucracy of unelected officials who can only perpetuate themselves in office by further invasion of private property at taxpayers' expense.

I would like to quote from *Overview* (page 2, 1st paragraph), "These Recommendations have been greatly summarized so that the *general concept* and direction is emphasized as opposed to the implementation detail". (emphasis added).

Should these *Final Recommendations* become the basis for state legislation on land use, there will be a flood of bills for implementing the regulations brought before this General Assembly. Only then will we recognize the enormity of these recommendations.

These recommendations are the basis of restructuring the local government in order to establish a legal base from which more detailed land use controls may be launched. Is the restructuring of local government for the purpose of providing a legal base for subsequent land use regulations constitutional?

Of primary concern to all of us should be the protection of private property rights. Among the most important rights of property ownership is the right of USE of your property.

My final question on these recommendations is – have we come to the point where we circumvent statutory and constitutional substance and proceedures with created non-elected boards and commissions with quasi-judicial and administrative powers to rule on the most basic of our rights – the USE of real property?

Irma L. Karmol

Irma L. Karmol
State Representative

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Report

of the Ohio Land Use Review Committee

to the Ohio General Assembly

June, 1977

need for action

Foreword

The 111th General Assembly created the Ohio Land Use Review Committee in Fall, 1975, to "review present land use laws, programs, and systems of land use control at the state, regional, county, and local levels . . ." and to make recommendations to the 112th General Assembly. This report presents the Committee's findings and recommendations.

When the Committee was appointed, the views of individual members on the subject of land use were as varied as the land use characteristics of their legislative districts located in old and new suburbs, small towns, rural communities, or the central cities in metropolitan areas. Neither a single view was held in common among the members, nor was there any shared sense of urgency about the need for legislative action. However, the Committee was aware that a great many Ohio citizens and groups were concerned about at least some aspect of land use, and was willing to understand these concerns more fully.

In the first phase of its review, the Committee conducted public hearings in thirteen different locations throughout the state. They heard testimony from nearly three hundred persons, and received many letters. Citizens' views were as varied as those of the committee members; their testimony indicated the widespread concern in Ohio about "land use laws, programs, and systems of land use control". Some general guidelines emerged from the hearings to direct the Committee's future work. The Committee presented these guidelines in their interim report, "The Time for Review," in July, 1976, to the General Assembly.

In the second, or study phase, the Committee divided into subcommittees consisting of three or four members. The subcommittees accepted topics representing specific review requests from the General Assembly which were confirmed as concerns in the public hearings. The staff and consultants assisted the subcommittees which reported their findings to the Committee in November, 1976.

To encourage open communication with a broad spectrum of interests, the Committee invited nearly sixty statewide organizations, representing both public and private interests in land use, to designate representatives to a Land Use Advisory Council. The Council elected its own leadership and assigned members of its Coordinating Committee to follow the work of the subcommittees. Council members were invited to each subcommittee meeting and often contributed useful suggestions to the discussion.

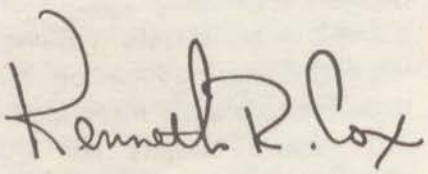
Following the study phase, the Steering Committee was created, consisting of the subcommittee chairmen, who reviewed, integrated, and expanded the findings of the subcommittees in some areas. The purpose of the Steering Committee was to develop a tentative set of recommendations for review and comment in a second round of public hearings to assist the Committee in its final deliberations. The Advisory Council aided the Committee by suggesting and organizing a series of briefing sessions held a week or ten days in advance of each public hearing in the hearing location. The purpose of the briefings was to enable interested persons and groups to understand clearly the Committee's tentative recommendations and prepare testimony. At each briefing, the staff distributed copies of the "Tentative Recommendations," summarized the main points of the recommendations, and answered questions. Six public hearings were conducted during March, and testimony was heard from over two hundred citizens.

need for action

The fourth and final phase of activity was the preparation of the final recommendations presented in this report. Based on the public hearing testimony and further study, significant changes in the tentative recommendations appear in the final recommendations.

Few legislative study committees have addressed so broad a subject with such extensive opportunities for participation by citizens and groups. The Committee's deliberations have been open, and the approach of its members has been candid and nonpartisan. Committee members have given a great many hours to the study and investigation of land use, participation in work sessions and meetings, and attendance at public hearings. The staff and consultants have assisted rather than directed the formulation of the recommendations, and have redrafted working papers many times to represent more clearly the Committee's views.

The recommendations are guides to legislative action. Now, actual legislation needs to be drafted, and subsequently introduced by individual legislators. In both the Senate and the House of Representatives, the extensive legislative process of standing committee review and public hearings will follow. This process will not and cannot be rapid, because the subject is large and complex. However, there must be continued and steady progress toward legislative action.



Kenneth R. Cox, Chairman
Land Use Review Committee

June 1977

Acknowledgements

The Ohio Land Use Review Committee is grateful for the efforts of the fifty-three members of the Land Use Advisory Council and especially its Chairman, Mr. Dale Finley, its Vice Chairman, Dr. Riley Dougan, and the members of the coordinating committee: Ms. Mimi Becker, Mr. James Daley, Mr. Dale F. Helsel, Mr. James M. Jennings, and Mr. Edmond M. Loewe. The Committee is also grateful for the efforts of those persons at various levels of government, including professionals and elected officials, who served as technical advisors at numerous meetings of the Committee or its subcommittees. Valuable assistance was provided in the two rounds of public hearings held throughout the State by the Advisory Council, and its area coordinators, who arranged for the series of briefings which preceded the hearings in March, 1977. Finally, the Committee deeply appreciates the contributions of the individuals who presented oral or written testimony at the hearings, or corresponded with the Committee following the hearings.

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Vice Chairman

Representative Eugene Branstool
Senator Robert D. Freeman
Senator M. Ben Gaeth
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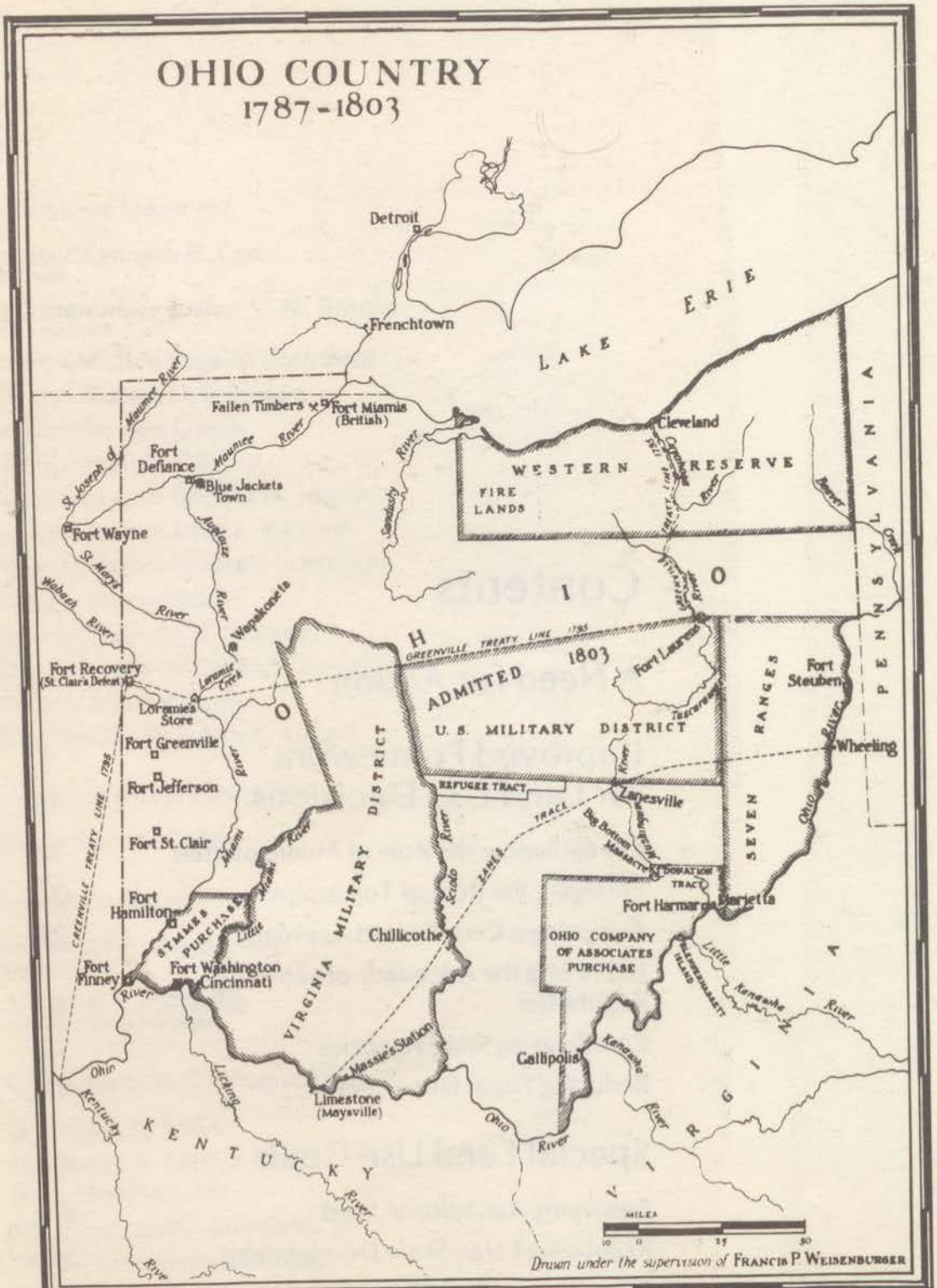
need for action



Western Reserve Historical Society

need for action
improved framework

Need for Action

Land use decisions involve consideration of a great many factors — economic concerns, individual desires, community values, and the public interest. Our communities, food supply, natural resources, and future quality of life are shaped by these decisions. The challenge is to make land use decisions wisely and with respect for their great importance and far-reaching effects.

People are aware that land is an important, finite, and often fragile resource. Farmers are concerned about the loss of prime agricultural land; neighborhood residents are worried about the potentially heavy traffic from a proposed shopping center; and environmentalists are concerned about the spoliation of a scenic river. All of these people share common concerns, although for different reasons. They are concerned about what is happening to the land, who makes land use decisions, and how well decisions are made.

Understanding the reasons for public concern about land use is basic to appreciating the need for changes in the state statutes. Changes must provide an improved governmental framework for land use decisions and procedures for achieving special land use goals.

Aerial Survey

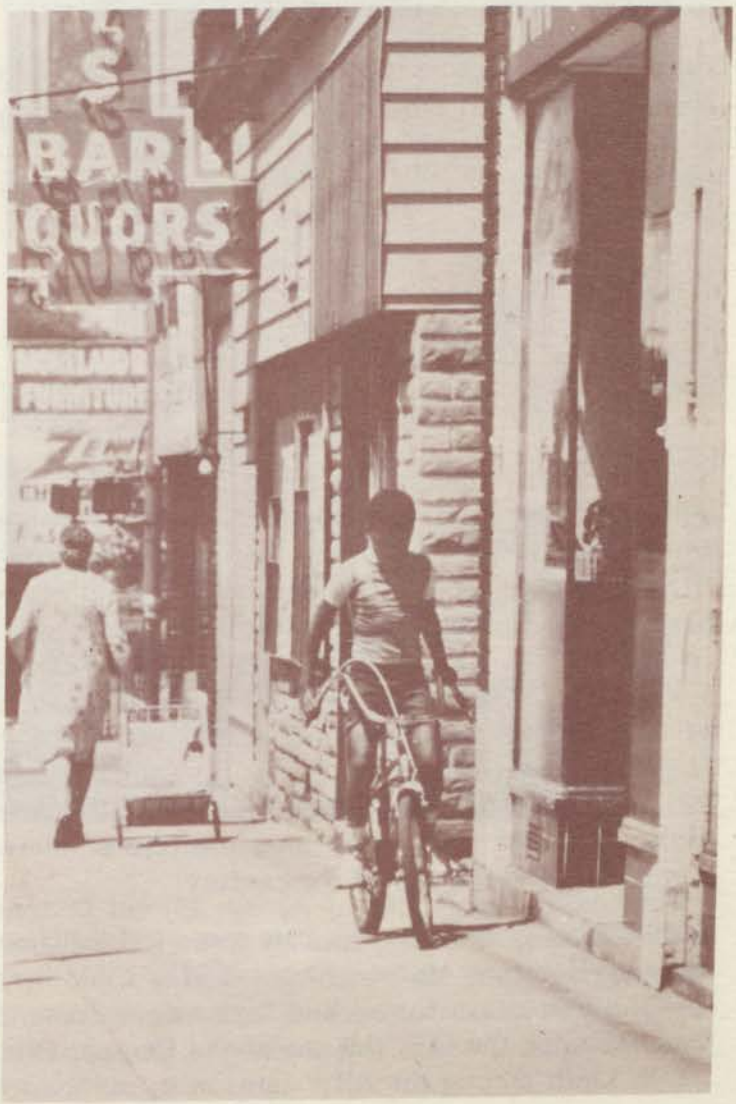
Changing land use patterns are a common concern.

Patterns of Land Use are Changing Rapidly

A dramatic number and variety of changes in land use patterns continue to occur throughout the state. In 1900, 94% of Ohio's total land area was used for agriculture. By 1970, the total amount of farmland had declined to 65%. This represents a loss of over two million acres of high quality farmland.

The amount of land devoted to urban uses continues to increase. From 1900 to 1970, the urban land area in Ohio increased sevenfold, from just over 400,000 acres in 1900, to more than 3,000,000 acres in 1970, or proportionally, the urban land area increased from about 1% in 1900 to 11% in 1970. During most of the 1950's and 1960's, Ohio's population living on the urban fringe almost equalled the population living within central cities. Today, Ohio's suburban residents outnumber residents of the central cities.

Cities are aging while farmland is being lost.



Buckeye Neighborhood Housing Services

Central cities are becoming "urban wastelands" as suburban areas continue to attract industry and people with higher incomes. The central cities are being left to the poor, the elderly on fixed incomes, and racial minorities restricted in their choice of housing and employment.

Urban population density has been decreasing. A 40% increase in urban population between 1940 and 1960 was accompanied by a 92% increase in municipal land area. The amount of land area consumed is increasing as a growing number of people seek to live in low-density neighborhoods and retain the advantages of urban areas.

It is estimated that by the year 2000, about 360,000 additional acres of land will be converted to urban use. An additional one million acres of open land, mostly farmland, will be subject to speculation and rising prices.

Competition for the Use of Land is Intensifying

New uses are competing for use of Ohio's twenty-six million acres, and sometimes require a large amount of land. For example, highways and interchanges consume huge amounts of land, and often have a severe impact upon the natural landscape of an area. In the past twenty years, construction of 1,406 miles of interstate highways consumed a total of 52,755 acres — 40,000 acres in rural areas. A large interchange, such as the link between I-70 and I-77, near Cambridge, Ohio, may consume over eighty acres of land — an area the size of many family farms at the turn of the century.

Public tastes, attitudes, and desires establish new markets for land development. Today Ohio is a desirable location for second home development. According to the U.S. Bureau of the Census, Ohio ranks ninth among the fifty states in its number of

Competition for the use of land is growing.

Ohio Conservation Foundation

Ohio Conservation Foundation

second homes. In 1974, thirty-four second home subdivisions were recorded, totalling 32,648 lots, covering 21,725 acres. Even more second homes are located in unrecorded subdivisions. Second home development is pushing the urban population into rural Ohio.

The changes in technology required to maintain and improve our high standard of living are expanding the land requirements for many facilities. For example, nuclear power plants are a recent and growing land use in Ohio and require special regulation. Due to safety requirements, the area required for a modern nuclear facility is often twice that of a conventional plant.

Since land use decisions occur frequently and development patterns change quickly and dramatically, it is increasingly difficult for people to preserve community values through local planning and regulation. A community land use plan which does not anticipate a specific use, such as a highway or energy facility, becomes outdated quickly, and ineffective as a development guide.

Land Use Changes Directly Affect the Quality of Life for More and More People

The quality of life for a large number of people can be changed by a single land use decision. For example, a major shopping center may alter the air and

Incompatible land uses create conflicts.

H. A. Henshaw, Inc.

water quality, property values, traffic patterns, the rate of new development, and stormwater drainage in populated areas far beyond the immediate site.

The need for understanding the relationship between individual land use decisions and the quality of life is now recognized. However, the uncertainty about the relationship between the cause and effect of many factors generates a climate of public opinion skeptical of change and growth.

People living far from an actual development site become concerned about a proposed land use change because they recognize its widespread effects. Development considerations cross government boundaries, and solutions require that new procedures involve the people affected by land use decisions.

Land Use Regulations have Become Complex and Confusing

A fragmented and complex series of Ohio statutes currently define governmental authority and responsibility for land use decisions. Fifty year old state enabling legislation has become complicated by more recent statutes added in response to particular land use problems.

State agencies administer fifty separate programs directly or indirectly affecting land use. In recent years the General Assembly has passed separate laws authorizing the regulation of activities such as strip mining, mineral extraction, and the siting of major power facilities. State responsibilities have been added without careful consideration of the need for coordinating state and local governments.

Between 1920 and 1970, the United States Congress expanded the federal government's role in the conservation and development of the nation's land resources. Twenty-three federal departments and

independent agencies now administer 137 land-related programs. Each of these programs is administered separately without concern for state and local government responsibilities.

As a result, local, state, and federal governments are administering many separate land use regulations and programs. A single development proposal frequently requires many approvals: subdivision approval from the municipality or county; a waste disposal permit from the Ohio Environmental Protection Agency, or local health board; an access permit from the Ohio Department of Transportation; and building code approval from the municipality, county, or state.

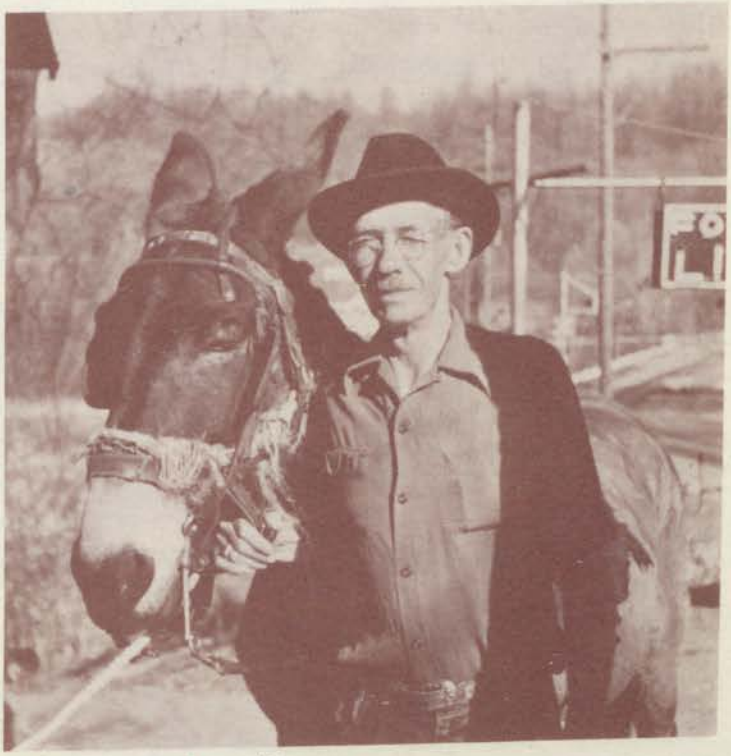
There is little coordination between separate units of government, and both citizens and public officials are confused about how land use decisions are made. Important considerations such as storm drainage and other physical characteristics which

Citizens face an uncertain future.

H. A. Henshaw, Inc.

determine the development capability of the land may not be evaluated. Approvals are delayed while one authority awaits another's decisions. The public is often dissatisfied with the resulting land use decisions.

The complexity and confusion in making land use decisions is compounded by complex administrative requirements. For example, thirteen people are responsible for administering a township zoning ordinance. Adoption of an ordinance requires twelve separate steps and takes at least a year.



Throughout Ohio citizens are concerned.

Ohio Department of Natural Resources

Citizens have Lost Confidence in Procedures for Making Land Use Decisions

The complex process of making land use decisions contributes to a loss of public confidence and participation. Reflecting a decline in public confidence in procedures, an increasing number of Ohio municipalities require voter approval of zoning decisions. Such a requirement in Eastlake, Ohio, has been the subject of a major court decision, and has been upheld in a landmark ruling by the United States Supreme Court.

Declining public confidence in approval procedures results in uncertainty and unwillingness to confront major regulatory decisions directly and openly. The public sometimes approaches proposed land use changes with hostility and skepticism toward the evaluations, assurances, and decisions by government.

Most municipalities and many counties have adopted comprehensive land use plans. Land use plans have been the primary attempt to define community desires. However, the legal status of plans is unclear, their content too idealistic, and their public support uncertain. As a result, planning in Ohio has been ineffective as a practical tool for guiding land use decisions.

The Courts Press for Improved Land Use Legislation

In recent years, the courts have frequently confronted the complexity, confusion, and decline of public confidence in land use regulation. They have examined closely the individual decisions of authorities to determine the criteria, standards, and bases for their specific actions. The courts are bring-

ing increasing pressure to insure that regulations are guided by legislative standards, definitive criteria, and adopted plans.

State enabling statutes have been the subject of numerous court decisions, attorneys' general opinions, and legislative amendments. The common pleas courts, county prosecutors, and attorneys general have provided varied, confusing, and conflicting guidance concerning the legal foundation for local land use regulations. Since there are few consistent legislative standards for the courts to rely on, the courts will continue their powerful and erratic role in land use decisions.

No easy solutions to land use problems exist.

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No Easy Solutions to Land Use Problems Lie Ahead

Strong personal emotions, different public attitudes, and complex legal principles all determine the governmental role in land use decisions. Changes in this role are controversial and will require open public discussion.

There are two distinct views toward land use issues. One view expresses deep concern for the negative effects of development which are not addressed in current governmental procedures. The other view expresses strong concern for continuing local government control over land use decisions. Both views share a concern for protecting communities from unchecked and uncontrolled development and for protecting individual property rights. Public policy must balance these views by encouraging local government procedures which respond to the complexity and far-reaching effects of land use decisions.

Statutory changes must consider constitutional principles as well as public views in regulating land use. Property rights must be protected and owners justly compensated when a taking of property occurs. Due process and equal protection under the law must be provided in regulatory measures and procedures. These principles are more than legal concepts; they are widely held beliefs deeply rooted in our society. These beliefs will play a major part in improving the governmental role in making land use decisions.

Changing land use patterns, increasing competition for the use of land, and the implications of land use decisions for the quality of life, are realities which must be faced. The complex and confusing governmental response to these realities has caused public dissatisfaction and increasing pressure by the courts for an improved governmental framework and new procedures. Legislative action to respond to these

realities must restore public confidence and meet public expectations by improving the governmental role. Finding solutions to fulfill these goals will not be an easy task, but it is one which is crucial to the future of Ohio.

Many problems require immediate action.

Ohio Conservation Foundation

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Improving Ohio's Land Use Legislation

The Committee recommends specific actions to improve the statutory basis for the governmental role in land use decisions. The recommendations in the second section of this report outline an improved framework for local government decision-making. In the third section, new techniques are recommended to achieve three special land use goals: preserving agricultural land, effectively regulating large-scale development, and protecting critical resource areas.

The recommendations share three characteristics. First, special emphasis is placed on improving the responsiveness and effectiveness of local government. Second, improvements to existing statutes are proposed, rather than adding new layers of review or bureaucracy. Finally, the recommendations require action by the General Assembly. This report is a guide to public discussion and a starting point for the legislative process.

need for action
improved framework
special goals

Improved Framework for Land Use Decisions

Many levels and units of government in Ohio make decisions directly or indirectly affecting land use. A single development is usually subject to decisions by some or all of these levels and units of government. As the demands upon the use of land have grown and changed, new and complex decisions have been required of various units of government to protect the public interest. Some new techniques to guide land use decisions have been devised without relating them to old techniques. Some old techniques, still in use, are inadequate to meet today's needs.

Units of local government and state agencies make decisions affecting land use based on provisions in the Ohio Constitution which provide for governmental authority and responsibility. More specific governmental powers and duties are defined in the statutes enacted by the General Assembly. This statutory framework needs improving.

The Committee reviewed the adequacy of existing enabling legislation which allows local governments to plan and exercise zoning and subdivision control,

studied the effect of taxation on desirable land use patterns, and reviewed present procedures to assure adequate citizen participation in making land use decisions. In this review two general principles were developed to guide the formulation of the recommendations: local governments should have the primary role in land use management, and comprehensive planning is essential.

The Primary Role of Local Governments • As in most other states, local governments in Ohio traditionally have been vested with the primary role in land use management. Although the need to address statewide land use concerns has motivated new land use legislation in other states in recent years, this legislation has generally reasserted the primary role of local governments. New legislation has emphasized "developing a state-local partnership" to seek better cooperation between state and local governments.

The Committee believes that local governments should continue to play the primary role in developing and implementing land use policies. However, there are different levels of local government within the state, and land use decisions should be made at the level most appropriate to the scope of the land use problem. The state needs to perform a supporting role by: (1) providing the statutory and financial support, and other tools to enable local governments to carry out their functions, (2) coordinating state agencies' decisions to avoid local conflicts, and (3) seeking to resolve any difficulties in intergovernmental relations.

Comprehensive Planning as a Key to Effective Land Use Management • In Ohio, planning has not been effective in developing and expressing public development policies. Under existing Ohio statutes, planning is a permissive function of local governments, and it is not explicitly stated that regulatory measures, or land use decisions, conform to a plan. Usually, comprehensive planning in Ohio has not been helpful to decision-makers.

The Committee believes that comprehensive planning can and should be a useful policy tool to assure that the public interest is rationally and openly determined, land use decisions are reasonable, and the policies of various units and levels of government are coordinated. Effective planning requires that elected officials as well as interested citizens are actively involved in making decisions, plans are prepared to meet the needs of decision-makers, and a commitment is made to follow adopted plans expressing practical public development policies.

Land use concerns focus on people.

H. A. Henshaw, Inc.

The remainder of this section of the report describes the relevant findings, and outlines the recommendations for improving the statutory framework for land use planning and regulation.

Strengthening the Role of Municipalities

Seven out of every ten Ohioans live in cities or villages. Based on both statutory and constitutional provisions, these units of local government have a primary role in land use planning and regulation. Some of the more difficult land use issues arise in these generally urbanized areas where complex large-scale development, or re-development is occurring. Often the resolution of land use issues affects not only the immediate city or village, but also adjoining communities including the surrounding unincorporated townships.

The Committee's review of the authority and responsibility of municipalities in land use management concentrated on municipal planning, land use regulatory measures, and capital improvements programming, as the principal means

Planning is a local responsibility.

The Athens Messenger

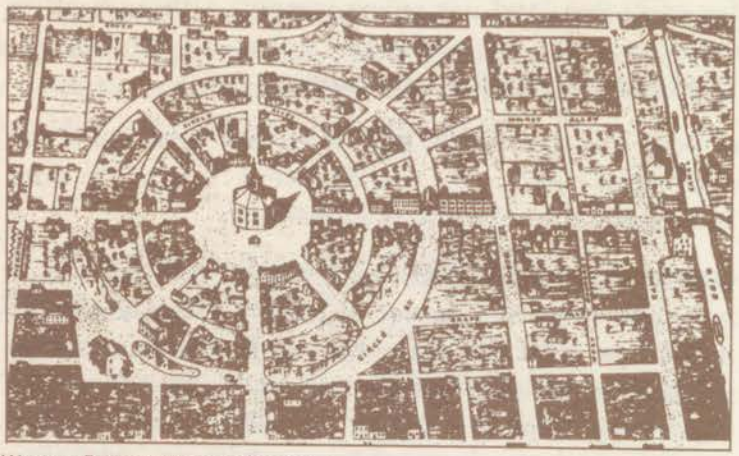
for effective land use management, although other measures may be needed in some circumstances. The following findings are made.

- Both constitutional and statutory provisions for municipal land use management create a dual source of authority and responsibility.

Under the Ohio Constitution, all municipalities have the exclusive power of local self-government, and share with the state the authority to exercise police powers such as zoning and other land use regulatory measures. Cities and villages which have not adopted charters, or have charters which are silent on the subject of zoning and regulatory measures, are governed by enabling statutes enacted by the General Assembly. This dual source of authority may be employed in a myriad of ways by municipalities, and has led to a long and complicated history of case law which has drawn fine, and not always conclusive distinctions between state and municipal concerns. More importantly, as land use issues increasingly involve more than the local interests of a single municipality, it becomes a proper concern of the General Assembly to insure that municipalities have clear authority and responsibility to deal with both local issues and issues broader in scope.

- An out-of-date definition of the scope of planning is still contained in statutory provisions for municipal planning.

The statutory provisions for municipal planning still reflect the early civic interest in an orderly and attractive layout of public places and facilities, and define the scope of planning in terms of "public works". Many cities and villages have expanded their scope of planning beyond such a limited definition, and include land use patterns, housing needs, and other concerns related to the growth and quality of life in a community. The statutes are outdated and provide inadequate definition for the scope of planning now practiced in many communities.



Western Reserve Historical Society

Early plans consisted of street layouts and public works.

• The standing of a municipal plan as a land use policy is unclear in the enabling statutes.

The municipal planning commission is directed simply to "make" a plan. There is no indication that the commission should adopt, or approve, a plan. The standing of a plan as an expression of community values is in doubt.

• No clear relationship between regulatory measures and planning is defined in the statutes.

The statutes provide only broad and vague concepts defining the relationship between planning and zoning. The statutes may be interpreted so that the zoning code, or map, is the plan. The zoning code, or map, may be the only expression of a municipality's development policies. As a result, zoning decisions lack guidance by a comprehensive statement of development policy, and there develops a series of inconsistent decisions based on implied and expedient policies.

The statutes imply that the planning commission's "zoning plan" forms the basis for the zoning code. Without any other plan, development policies may exist only in the minds of the planning commissioners.

Complex and similarly inadequate statutory provisions for subdivision regulation are also

Parking: a common urban problem.

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unrelated to planning. However, the planning commission may adopt subdivision rules and regulations subject to ratification by the legislative body of the municipality.

- Without a firm policy base, regulatory measures may be overturned in the courts.

Regulatory measures, especially zoning, are continually challenged in the courts. Measures frequently have exclusionary effects, are not based on sound or legislatively established criteria, or attempt to consider subjects not specifically authorized by the enabling statutes.

- The design and programming of new or expanded public service facilities and systems are effective in implementing and coordinating development policies.

The amount and rate of private development, and its location with respect to suitable areas for development, are dependent on the availability of public services. The design and programming of sewer and water lines, for example, are a positive and effective way of implementing development policies. Since some public service systems are multi-jurisdictional, their design and programming require coordination among local units of government. The statutes offer limited guidance in capital

improvements design and programming which are practiced by too few municipalities in any systematic way.

The following recommendations based on these findings are intended to strengthen both the authority and responsibility of municipalities.

Recommendation: The planning commission of each municipality should prepare a comprehensive municipal development plan for adoption by the legislative body.

The municipal development plan would be a detailed description of the desired land use pattern and development policy of the municipality. It would address the type, location, timing, and intensity of development as well as the public improvements needed to support such development. It would be adopted by the legislative body, and thus provide a legal base for land use regulations.

The plan also would guide the preparation, adoption, and administration of community development programs and capital improvement expenditures.

The procedures for preparation and adoption of a municipal development plan would offer opportunities for open public participation which could build public trust in the decisions based upon the adopted plan.

Recommendation: Municipal development regulations and their administration should conform to the adopted municipal development plan.

A plan adopted by the legislative body would provide the administrative and legal basis for enforcement of development regulations. Basing the exercise of police power on a legislatively-adopted set of development policies would provide assurance that the regulations are reasonable and would increase property owners' confidence in the soundness of the regulations.

Recommendation: Municipalities should be enabled to combine regulatory measures in a single development code.

Specific statutory authority should be provided to enable cities and villages to combine zoning, subdivision regulations, housing and building codes in a single, integrated development code. A single code would organize the provisions of these regulatory measures in a logical sequence, and eliminate any duplications.

This approach is central to the Model Land Develolopment Code recently adopted by the American Law Institute and recommended to local governments.

Recommendation: Each municipality should prepare and adopt a capital improvements program which conforms to the adopted municipal development plan.

Included in a five-year capital improvements program would be estimates of costs, sources of

Suburban growth often occurs rapidly.

H. A. Henshaw, Inc.

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Townships lack adequate controls.

revenue, and a statement of priorities for construction of public service facilities and systems. A capital improvements program would conform to and help implement the adopted development plan.

Enlarging the Role of Townships

About three million Ohioans live in the unincorporated areas of townships. More than thirteen hundred units of township government possess only the powers and duties explicitly provided in statutes enacted by the General Assembly.

It is important to enable townships to play an enlarged role in land use management. Some townships are essentially urban in character and have a larger population than many incorporated municipalities. Many other townships are located on the growing edge of urban areas. A great many townships contain prime farmland, unique environmental areas, lands unsuited for development, mineral deposits, and other valuable land resources.

The following findings are based on a review of the present role of townships in land use management.

- Land use regulatory measures are non-existent or inadequate in many townships.

Although about half of Ohio's townships have adopted zoning codes, and approximately three out of every four counties exercise subdivision regulations in unincorporated areas, many unincorporated areas in Ohio are still without land use regulatory measures. In some unincorporated areas with regulatory measures, measures are out-of-date, or local resources cannot support the effective administration of these measures.

- Statutory procedures for enacting township zoning are unnecessarily complex and time-consuming.

Among the steps required to enact a zoning code are a declaration of intent to enact a zoning code, appointment of a zoning commission, preparation of a code, approval or disapproval of the code by the county or regional planning commission, and a popular vote on the recommended zoning code. Some steps may be repeated before the process is completed. A great many public officials at both the township and county level are involved in the process, often over an extended period of time and with many opportunities for delay.

- The relationship between township zoning and planning is unclear and uncertain.

The statutory provisions for township zoning refer to the preparation of regulations "in accordance with a comprehensive plan," but the statutes do not enable townships to form a planning agency or engage in comprehensive planning. Provisions requiring submission of a proposed zoning code to the county or regional planning commission for their approval or disapproval, may have been intended to define this relationship. However, the action by the county or regional planning commission is simply advisory. While their disapproval requires the township zoning commission to hold an additional public hearing, disapproval does not necessarily alter the proposed code, or prevent its adoption. Adopted township zoning codes

sometimes bear little relationship to an adopted county plan, and appear to depend on unrealistic development expectations.

The following recommendations are intended to enable townships to assume more effective roles in land use management. A special objective of the Committee is to insure that townships are meaningfully involved in countywide planning.

Recommendation: Townships should be enabled to create a township planning commission and adopt a comprehensive township development plan.

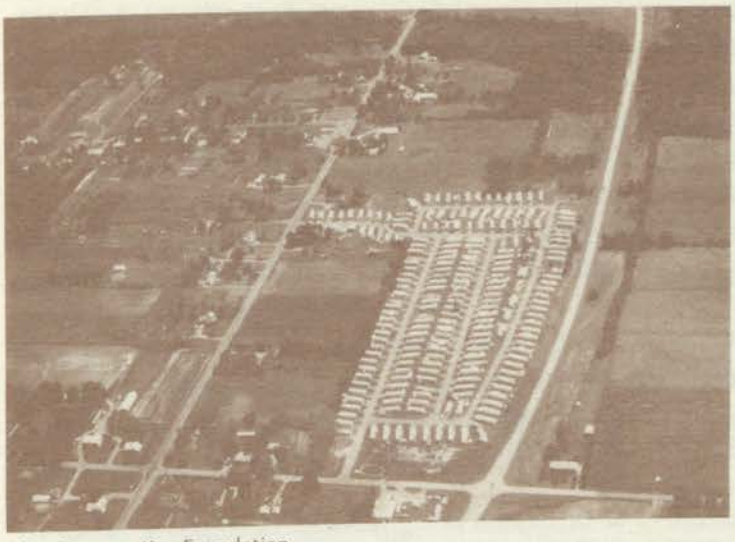
A resolution of the board of township trustees upon their own initiative, or upon petition of a designated number of residents of the township would create the township planning commission. The planning commission would replace an existing township zoning commission and assume its powers and duties, in addition to performing planning functions. The commission would consist of five citizens from the township appointed by the board of township trustees.

The township planning commission would prepare and recommend a comprehensive township development plan for adoption by the board of township trustees. During preparation of the plan, the commission would provide an opportunity for interested township residents to express their views about local development. The plan would express desired development policies, and its adoption would provide a sound legal basis for zoning.

Recommendation: A township development plan should be consistent with the provisions of an adopted countywide general plan.

Recommendations in later pages of this report propose the development of a countywide general plan to establish a framework to coordinate development patterns, extend or expand public service systems, and protect or conserve critical

Townships lack authority to plan.



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resource areas. These concerns usually involve several political jurisdictions. Townships would participate in the development of the countywide general plan, and township plans would be consistent with it.

Recommendation: The board of township trustees should be enabled to adopt a township zoning code which conforms to an adopted township development plan.

In townships with a township planning commission and an adopted township development plan in accordance with the previous recommendations, the board of township trustees could submit to the township electors the question whether a township zoning code should be prepared, or an existing code amended. If the voters favor the preparation of a new, or amended zoning code, the planning commission would prepare a new or amended zoning code which conforms to the township development plan, and recommend the code for adoption by the board of township trustees.

In townships with an existing adopted development plan, the above recommendation would replace the

present requirement for a popular vote on a recommended, new, or amended zoning code. The basic principle of a popular vote would be retained by requiring a vote on the question of whether the development plan should be implemented by a new, or amended zoning code, rather than on the question whether a specific zoning code or amendment should be adopted. The township development plan would express the views of interested township residents toward local development policies. By provision of the Ohio Constitution, the adoption of a new, or amended zoning code, by the board of township trustees would be subject to a referendum.

Later in this report, the adoption of a county development code combining subdivision regulations and zoning provisions for unincorporated areas is recommended. The zoning provisions of a county code would be replaced by an adopted or amended township zoning code in accordance with the previous recommendations.

Achieving a Coordinated Approach

Strengthening the role of municipalities and enlarging the role of townships are important steps toward improving land use management in Ohio. Building upon these improvements, measures are needed to address concerns of more than a single local governmental unit.

Present statutes which permit the creation of a single or multi-county regional planning commission, or the organization of a county planning commission, seek to provide this coordination. These agencies exist in all of Ohio's counties, and are struggling with inadequate statutory provisions as the scale and pressure of development combined with the concern for protection of valuable land resources make the need for coordinated decisions more pressing.

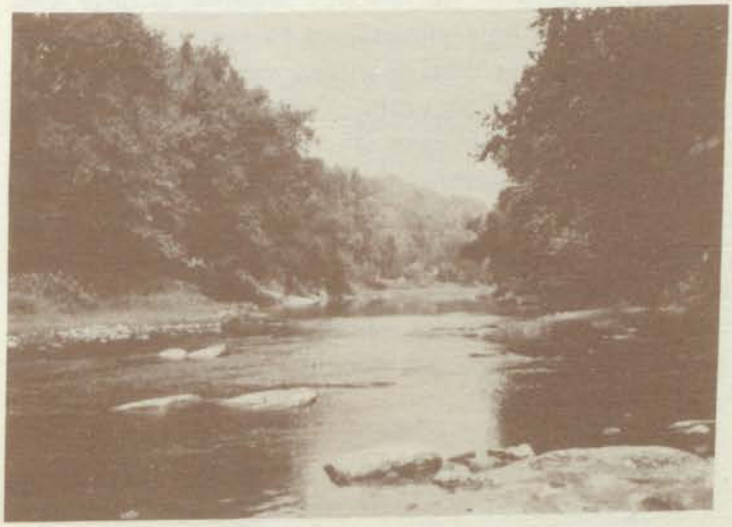
The Committee believes that it is practical to build upon the foundation of the planning agencies already established in each county to achieve a coordinated approach to planning and land use regulation. In metropolitan areas, established multi-county or areawide planning and coordinating agencies can perform a useful role. Certain deficiencies, however, are evident in the existing structure.

- Under current statutes broad representation of units of local governments on county or regional planning commissions is not assured.

In Ohio a regional planning commission is created by units of local government, and only governments which choose to participate are represented on the commission. Voluntary participation has sometimes led to factional divisions in a single or multi-county area and reduced the agency's coordinating capacity. Factional divisions over representation have generated greater fragmentation of land use management than may have previously existed.

In Ohio a county planning commission is created by the board of county commissioners, but representation of units of local government is not fully

Land use concerns cross governmental boundaries.



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Unincorporated areas have special land use problems.

assured. In addition to the three county commissioners, membership on the commission consists of eight citizens appointed by the county commissioners. Only in counties with a city containing at least half of the county population, must three of the citizens be appointed to represent the city. Except for this provision, there is no assurance that units of local government will be represented.

- The plan which may be developed by a county or regional planning commission has no legal standing as a policy commitment by units of local government.

Unlike municipal planning commissions which, if created, are required to make a plan, statutory provisions permit, but do not require, county and regional planning commissions to prepare a plan. If the county or regional planning commission adopts a plan, municipal planning commissions may adopt the portions of the plan which apply to their area. The board of county commissioners may adopt the portions of the plan which apply to the unincorporated areas. The optional and advisory nature of regional or county plans has fostered unrealistic projections. Plans receive limited standing and are ineffective in coordinating decisions by units of local government.

- Coordination in the administration of regulatory measures in unincorporated areas is often lacking.

Three out of every four counties in Ohio administer subdivision regulations in their unincorporated areas. In most of these counties, at least some townships administer a zoning code. New development is usually subject to both types of regulation, and the scope of provisions in both types is overlapping. This condition has resulted in inconsistency in applying regulations, unnecessary delays, conflicts in administration, and a strong need for coordination.

A practical means to achieve the coordination of local governments is to establish a countywide planning process with joint participation by units of local governments.

Recommendation: In each county there should be a countywide planning commission whose membership represents local governments and reflects the population distribution in the county.

A majority of the commission members would be elected officials representing townships, municipalities, and the county. Citizen members would make up the balance of the commission to achieve a proportional representation of population distribution among the various units of local government. Existing county, or single-county regional planning commissions, could reorganize to meet these requirements.

The countywide planning commission would prepare, adopt, and periodically update a countywide general plan. The commission would also recommend land use regulatory measures for adoption by the board of county commissioners.

The state would match local public funds dollar for dollar to a maximum amount of twenty cents per capita to support the general operations of the commission.

Recommendation: A countywide general plan should be prepared, adopted, and periodically updated by the countywide planning commission.

The countywide general plan would express policies for land development and conservation throughout the entire county. It would provide a framework for coordinating more detailed planning by units of local government and would guide the commission's recommendations for regulatory measures and capital expenditures of county government.

The commission would seek state recognition of its adopted general plan. Recognition would have the effect of requiring that actions of state agencies conform to its provisions. This recommendation introduces a new procedure for coordinating the decisions of state and local governments.

The countywide general plan would address the following elements:

- a land use element showing future development patterns of the countywide area
- urban service areas where water and sewer services will be made available
- location of major transportation facilities
- critical resource areas including significant natural areas, prime agricultural land, and scenic river corridors
- open space and recreation areas
- estimate of current and prospective housing needs within the county

The delineation of urban service areas would establish a commitment to the extent of urban development. This commitment would seek to balance the objectives of providing for estimated housing needs, preserving agricultural areas, and protecting other critical resource areas. In metropolitan areas, these elements would be prepared in cooperation with an established areawide planning agency.

The commission would seek to incorporate local plans and views in the countywide general plan. During its preparation, the commission would review and consider adopted municipal development plans. Municipalities and townships would be

Changing use of farmland is often a countywide concern.

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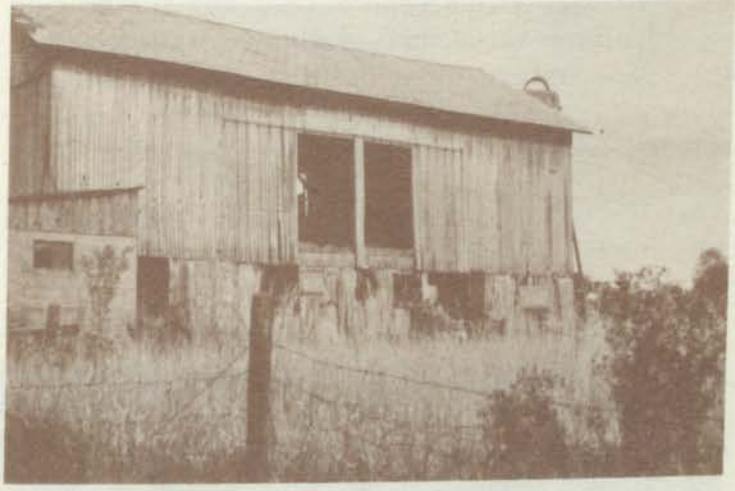

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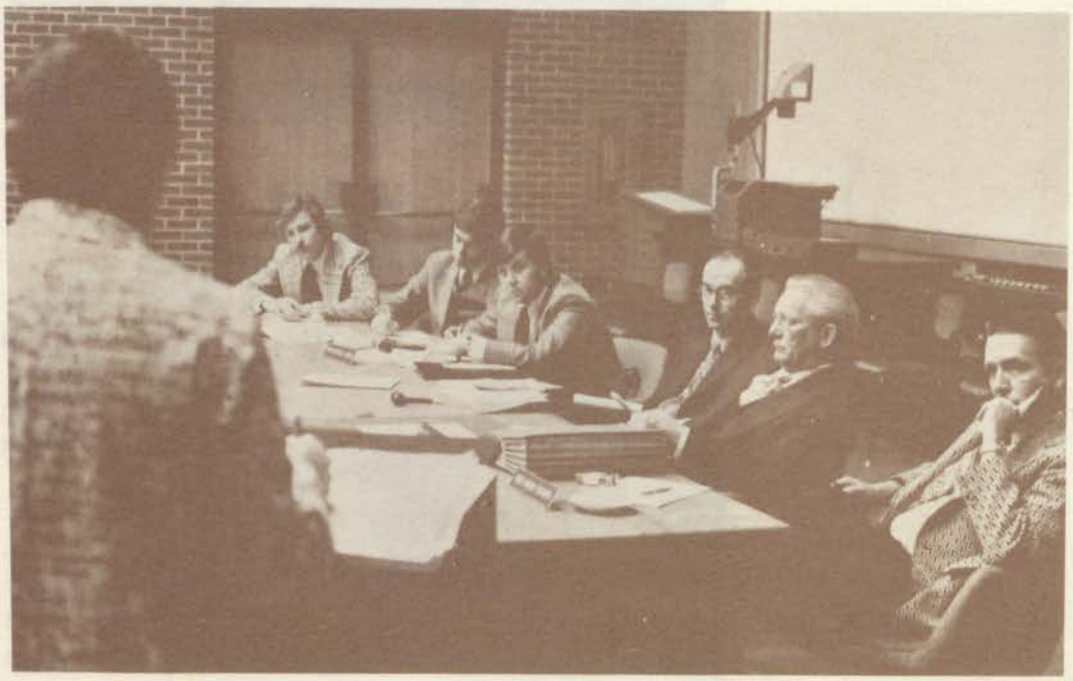
given an opportunity to review the proposed countywide general plan prior to its adoption by the countywide planning commission.

The commission would submit the proposed general plan to the countywide planning commissions of adjoining counties for their review to achieve compatibility among countywide general plans. For the same purpose, the commission would submit the proposed plan for review by an areawide planning and coordinating agency established in the area. Review and comments would be advisory to the commission, and would identify policy conflicts and the grounds for their resolution.

In anticipation of seeking state recognition of an adopted countywide general plan, the commission would submit the proposed plan to state agencies for review and comment. Their comments would be advisory and would identify any conflicts requiring resolution before obtaining state recognition.

Advisory committees would provide opportunities for citizen involvement in the preparation and

Advisory committees would involve citizens.



The Athens Messenger

review of the proposed plan. One or more public hearings would also be conducted prior to the plan's adoption by the countywide planning commission.

The plan would be readopted at least every five years according to the same procedure to insure that the plan remains up-to-date.

Recommendation: Areawide planning and coordinating agencies should assist in the preparation of countywide general plans.

In metropolitan areas, county development patterns are interdependent with patterns in adjacent counties. Existing multi-county or areawide planning agencies would assist the countywide planning commissions in the preparation of their general plans.

The state would match local public funds dollar for dollar to a maximum amount of ten cents per capita to support the general operations of the areawide agency.

Recommendation: An adopted capital improvements program should conform to the countywide general plan.

The countywide planning commission would recommend for adoption by the board of county commissioners a five-year capital improvements program which conforms to the countywide general plan. This program would set forth the staging, priorities of construction, estimates of costs and sources of revenue needed to implement the adopted general plan. The first year of the program would be presented as the capital budget. The commission would be responsible for coordinating the capital improvements program with adopted township and municipal development plans.

Recommendation: A county development code should be adopted to conform to the countywide general plan.

The countywide planning commission would prepare the county development code and recommend its adoption by the board of county commissioners. This single development code would combine the currently permitted provisions of platting requirements, subdivision regulations, and improvements standards with appropriate zoning provisions for the unincorporated areas of the county. The provisions would be consistent with the adopted countywide general plan. Provisions of township zoning codes, which previously had been adopted, would be integrated with the code to the extent they conform to the countywide general plan.

The board of county commissioners would be enabled to delegate administration of the county development code either to the countywide planning commission, or to individual townships at their request. A board of adjustment would be established to hear and judge appeals.

Improving the Adequacy of Land Use Regulation

The General Assembly is responsible for any inadequacies in the statutory provisions which limit the capability of local governments to exercise land use regulations effectively and efficiently.

Local public officials have made many detailed suggestions in this area to the Committee, and a number of specific recommendations for improvements in the enabling statutes have been formulated.

Recommendation: Enabling statutes for zoning and subdivision regulation should be revised to improve their adequacy.

Enabling statutes for both zoning and subdivision regulation should be revised to permit flexible stan-

dards which will allow preservation of unique natural features of the land through modern development practices of creative site and building design. The statutes should also be revised to foster meaningful public participation in the regulatory process.

Enabling statutes for zoning should be revised to limit the authority of boards of zoning appeals to hearing and deciding appeals, and to granting variances for special circumstances.

Enabling statutes for subdivision regulation should be revised to require the review and regulation of any land subdivision which creates new lots for development. Any land subdivision simply for the transfer of land between adjacent property owners would be exempt from regulation. Revisions also should be made to enable the dedication of land for public services or facilities, and the provision of compensation for any portion which does not directly benefit the development. The payment of a fee in-lieu-of dedication for the development's pro rata share of public facilities which directly benefit the development, should be allowed as an alternative. There should be established an appropriate method for making appeals on subdivision regulation decisions.

Coordinating State Agencies

Ohio, like most other states, has delegated comprehensive and direct authority for preparing land use plans and regulations to local governments. However, through capital expenditures, special purpose regulatory programs such as power plant siting, or participation in federal programs, the state directly and indirectly affects land use in Ohio. The state's principal activities affecting land use are distributed among six major state agencies: the Departments of Natural Resources, Economic and Community Development, Transportation, Health,

Agriculture, and the Environmental Protection Agency. In addition, many other agencies undertake capital projects, and a number of independent boards and commissions have responsibilities which affect land use.

These state responsibilities and actions are administered separately without a sufficient unifying policy. There are now fifty separate land use related programs which sometimes conflict. Based on a review of the need for better coordination of these programs, the following findings are made.

- The enabling statutes give several state departments broad responsibility for land use, but do not define specific responsibilities.

Each of six major state agencies has a broad statutory directive to administer land use programs. However, none has specific land use duties. The result has been sporadic starting and stopping of programs within agencies. For example, the Department of Economic and Community Development has conducted an active program of advising local governments on rural zoning. Broad authority enables, but does not specifically require, the department to conduct such a program. Under this broad statutory authority, the state's role in

Several specific land uses are a statewide concern.

H. A. Henshaw, Inc.

assisting local land use planning and regulation lacks specific legislative direction, and depends instead upon administrative direction.

• Federal programs have helped to create a fragmented pattern of agency responsibilities.

Federal programs administered by the state have overlapping land use requirements. The Environmental Protection Agency administers the federal water quality planning funds under the federal Water Pollution Control Act which requires an analysis of land use patterns. The Department of Natural Resources administers the federal Coastal Zone Management Act which requires analysis of land use decisions along the shoreline of Lake Erie. The Department of Economic and Community Development administers sub-state planning funds under Section 701 of the 1954 Federal Housing Act which requires preparation of a land use element. While there are cooperative agreements among federal funding agencies, these agreements have not prevented fragmented responsibilities.

• Current statutes defining responsibilities for coordinating state agencies are also fragmented.

The Office of Budget and Management is charged with investigating duplication of work in various state departments and formulating plans for further coordination of departments. The Department of Economic and Community Development is required to coordinate the activities of state agencies which have an impact on carrying out the functions and duties of the department.

Numerous federal programs require the creation of a program coordination mechanism with the consequence that several state agencies must attempt to coordinate each other's programs.

• State capital projects, regulations, and programs, are not coordinated with the land use planning and regulatory responsibilities of local governments.

Several state agencies adopt functional plans, define specific policy directions, adopt rules and regulations, approve capital investments, and make other decisions which directly or indirectly affect land use. These actions sometimes ignore the responsibilities of local government. There is no single, accountable mechanism for coordinating state actions, reviewing the program implications of federal funds, or matching state actions with the responsibilities of local governments. Locally adopted plans and regulations will continue to be ineffective guides to land use decisions if they are ignored in the actions of state agencies.

The recommended approach for improving the coordination of state agencies contains four major parts. First, the Governor should be provided with clear statutory authority and responsibility for coordinating state agencies. Second, statutory responsibility and authority for coordinating federal grant applications should be established. Third, existing statutory delegation of responsibilities to agencies for land use programs should be clarified. Fourth, a procedure for state recognition of countywide general plans should be established which would tie state actions to the implementation of the plan.

Recommendation: The General Assembly should provide explicit statutory authority and responsibility to the Governor for coordinating state agencies.

The General Assembly would provide the Governor with explicit statutory responsibility and authority to coordinate the policies, plans, and programs of state agencies. The Governor would convene departmental representatives to deal with interdepartmental policy, plans and programs, and would implement administrative changes for improving agency coordination. The Governor would establish procedures for carrying out agency coordination and would issue an annual report to the General Assembly summarizing the major policy,

plan, and program coordination problems facing the state.

Recommendation: An explicit statutory directive should be provided for the coordination of federal grant applications made by state agencies.

The conditions of each federal grant application would be consistent with the activities of the applicant state agency as authorized by law. The Governor would be authorized to place the state clearinghouse for this purpose, either in the Office of the Governor or the Office of Budget and Management.

The state clearinghouse would receive and circulate for review and comment all state agency applications for federal assistance, and would advise the Governor on these applications. It would publish annually an account of federal grant applications submitted, and grants received by state and local governments, and would review and comment on the applications by local governments for federal assistance which are required by statute to be reviewed by the state.

Recommendation: The General Assembly should revise specific statutory and program responsibility to clarify departmental roles in land use coordination.

The general comprehensive planning responsibilities of the Department of Economic and Community Development would be replaced with a specific statutory responsibility to prepare a biennial report on the state's economy for use by the Governor and the General Assembly.

The inventory and analysis of physical land capabilities, presently administered as the Ohio Capabilities Analysis Program by the Department of Natural Resources, would be explicitly recognized in the statute. A formula for sharing the program costs would be provided, and expanded state

funding would be available for data collection, analysis, and distribution to local governments. This program would be the primary vehicle for transferring data collected by state agencies to local planning agencies.

Recommendation: The General Assembly should establish a state-local government commission to oversee state recognition of countywide general plans.

The state-local government commission would be chaired by the Lieutenant Governor and include representation from the General Assembly, the public, and county, municipal, and township governments. The general responsibility of the commission would be to serve as an independent forum for the discussion and resolution of problems associated with the relationships and coordination between state and local government.

A specific responsibility of the commission would be to enforce recognition by state agencies of adopted countywide general plans. It would conduct hearings and issue rulings concerning challenges by local governments to state actions which conflict with countywide general plans, and challenges by state agencies to the provisions of an adopted countywide general plan. The commission would also balance state and local interests in large-scale development decisions and eminent domain actions within agricultural districts. The commission would have no authority to regulate land uses.

Reducing Fiscal Disparities

In addressing its charge from the General Assembly to review the effects of taxation on desirable land use patterns, the Committee observed that units of local government often engage in so-called "fiscal zoning", or the practice of making zoning decisions

Reducing fiscal disparities serves many purposes.

H. A. Henshaw, Inc.

with the primary objective of increasing property tax revenues, or avoiding added public service costs. In some circumstances, such considerations may overshadow other factors which would lead to a more desirable land use decision.

Early in its deliberations, the Committee concluded that a more serious distortion of land use decisions results from the wide fiscal disparities among local governments due to an uneven distribution of taxable resources. A municipality with limited taxable resources is virtually compelled to pursue "fiscal zoning", especially when a neighboring community with a high level of taxable resources is competing by providing high standards of public services. A practical remedy to any ill effects of "fiscal zoning" is to seek the reduction of fiscal disparities among local taxing districts.

Recommendation: The General Assembly should undertake at an early date an appropriate effort to design and implement an effective and practical approach to reducing fiscal disparities among local taxing districts.

By enacting the so-called "equal yield formula" for allocation of state support to local school districts, the General Assembly has set a precedent for reducing fiscal disparities.

Several possible approaches to reducing fiscal disparities have been reviewed, such as tax-base sharing enacted in the Twin Cities metropolitan area by the Minnesota legislature. The General Assembly should seriously consider this objective. Although diminishing the influence of taxation on land use decisions is an important purpose, the recommended approach toward reducing fiscal disparities should consider a broader range of purposes.

need for action

improved framework

special goals

Special Land Use Goals

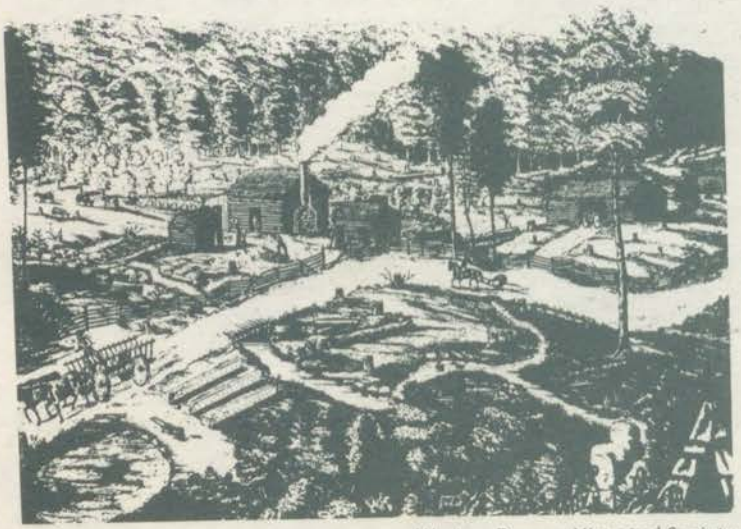
The Committee was directed by the General Assembly to review three specific matters of public concern: the preservation of agricultural land, the management of large-scale development, and the protection of critical resource areas. Both agricultural and critical resource areas are especially sensitive to changing land use patterns and increasing competition for the use of land. Large-scale developments, such as a major shopping center, dramatize the complexity of government regulations, public distrust of development approval procedures, and the resulting public hostility toward major land use changes. These three concerns, or special land use goals, present unique problems for the development of statutory procedures.

Valuable agricultural land, large-scale developments, and critical resource areas covering large geographic areas, serve and affect large numbers of people. Their importance and value extend beyond the boundaries of a single township, municipality, or county. Local units of government must cooperatively preserve agricultural land, regulate

large-scale development, and protect critical resource areas. Achieving these goals depends upon consistent land use decisions in these areas.

Numerous state actions acknowledge the statewide importance of agricultural land, large-scale development, and critical resource areas. The state has provided a procedure for the valuation of farmland based on its agricultural use as opposed to its market value, to reduce tax pressures on farms. The Power Siting Commission with statewide jurisdiction regulates the siting of large-scale power facilities. The Ohio Department of Natural Resources has statutory duties to identify and inventory critical resource areas. These statewide interests must be balanced and coordinated with local planning and land use decisions.

A state-local government partnership which clearly defines the responsibility and authority of both levels of government is essential. This partnership is needed to retain local government responsibilities in making land use decisions and also to insure that there is recognition of the statewide importance of the economic contribution of agriculture, the need for major new development, and the protection of critical resource areas.



Agriculture plays a major role in Ohio's history.

Western Reserve Historical Society

The recommendations outline procedures which recognize the importance and relevance of the special problems in pursuing these goals. Preserving agricultural land requires a different approach than regulating large-scale development, or protecting critical resource areas.

The recommended approaches to achieve these special land use goals are first steps toward constructing an improved governmental framework. The proposals seek to identify the external effects of land use changes and also retain units of local government as the primary administrators to achieve these goals.

Preserving Agricultural Land

Ohio is both an urban and rural state. Thirty-nine of its counties are a part of seventeen metropolitan areas which are centered in Ohio or adjoining states. Yet Ohio ranks high among the fifty states in harvested crop land and cash receipts from the sale of farm products. Few states can match this diversity. Maintaining this diversity requires striking a balance between urban space, with its necessary

Early settlers made a commitment to the land.

Landmark Inc.

Landmark Inc.

Early technology made farming vital to Ohio's economy.

support facilities, and blocks of profitable farmland. The following findings indicate the need for improved measures to preserve long-term agricultural interests.

- Public actions discourage long-term agricultural interests.

Decisions to extend water and sewer services, and approvals for expansion of private facilities often do not recognize the need to balance urban growth and the preservation of agricultural land. One corner of a farm may be taken for a highway; one side of a farm may be serviced by water and sewer; and a power line may run through the middle. Residents in a nearby subdivision may bring complaints of odor and noise. Rising costs and mounting complaints reduce the incentive to continue the farm. The farm-owner's capital investments in buildings, equipment, and other improvements decline. Eventually the farm is lost.

- Modern agriculture requires large blocks of contiguous farmland.

The technology of farming and agri-business makes large blocks of farmland essential to generate the economies of scale necessary for profitable

Agricultural districts would preserve productive farmland.

Landmark Inc.

agriculture. A profitable and economically healthy farm community is the key to maintaining Ohio's agricultural land base. As small amounts of farmland are taken out of production, the grain elevator, machinery repair service, supply stores, and other support facilities lose business. Eventually, the demand for these services declines until they are forced out of business and are no longer available to support farm operations.

• Conversion of farmland has occurred without regard for its productivity.

Land is needed for uses other than agriculture. Flat, well-drained land is suitable for agriculture, and is also desirable for residential development. Technological improvements permit the reduction of the agricultural land base as well as an increase in the food supply. Advances in technology combined with farmers' skills produce more food on a smaller land area. Conversion of farmland to other uses has occurred without regard for the productivity of farmland. There has been no attempt to limit this conversion to less productive farmlands.

• State government has not established explicit policies for protecting agricultural land.

Public development decisions reflect the lack of consideration given to the relative productivity of farmland. Plans for highway construction, water supply reservoirs, and recreation areas, have not considered the land's agricultural productivity, or long-term farming interests. There are no requirements that the state agencies review their policies to insure the protection of productive agricultural land.

- Zoning has proved ineffective in preserving agricultural land.

Ohio's statutes permit local governments to exercise the police power of zoning. Land is frequently zoned for agricultural use because it is not immediately apparent that other uses are forthcoming. The "agricultural" zoning is not intended to reflect the "highest and best use" of the land, but is intended to change as developments are proposed. When non-farm uses encroach on agricultural areas, there are frequent conflicts since farm operations are not always compatible with residential subdivisions or other uses. Complaints, nuisance suits, and additional pressure to abandon the farm result.

Several practical means to preserve productive agricultural land in Ohio are needed. Measures to preserve agricultural land should be voluntary, recognize landowners' long-term commitments to farming, and provide landowners with relief from undue property taxation.

Recommendation: Individual landowners should be authorized to create agricultural districts voluntarily.

A procedure would be established to allow one or more landowners voluntarily to petition the board of county commissioners to establish an agricultural district of five hundred or more acres for an eight year period. The petition would declare

the landowners' intention to maintain the agricultural use of the land area.

The county wide planning commission, a county agricultural advisory committee, and state agencies would review the petition to insure that the creation of the proposed district would be consistent with local and state plans, and would include predominantly productive agricultural land. The board of county commissioners would give the final approval on the petition.

The countywide planning commission would be required to recommend criteria for the review of petitions. Adopted by the board of county commissioners, the criteria would guide the review of district petitions. Once a countywide general plan is adopted, the review policy would become part of the plan.

At the end of every eight year period, the county and state would review an agricultural district. At that time the landowners could withdraw from, or dissolve the district, or the boundaries could be modified.

The creation of agricultural districts is not a new approach to preserving agricultural land. Since enabling legislation was enacted in 1971, in the State of New York, individual landowners have placed twenty-five percent of all agricultural land in the state in agricultural districts voluntarily. Although a property tax benefit for agricultural land similar to Ohio's is also available in New York, the benefit has been applied to less than five percent of the four million acres in agricultural districts. Most districts have been created to gain other types of benefits for the protection of agriculture.

The principal purpose of an agricultural district would be to reduce governmental pressures which discourage a landowner's long-term commitment to agriculture. Landowners who wish to maintain their land in farm production would be encouraged to do

so. Governmental decisions would respect this commitment.

The creation of agricultural districts would identify areas of the state that are owned by individuals with long-term commitments to farming. Both landowners and governmental agencies would need to assess their future plans and intentions before creating an agricultural district. The identification of these areas would provide private and public decision-makers with a framework for directing growth and development within the state.

Recommendation: Government actions should respect the long-term commitments by landowners forming agricultural districts.

Landowners in agricultural districts would receive the following specific benefits:

- A landowner could request that the land be taxed according to its value for agricultural use at any time during the eight year period. Annual applications for this benefit would not be required.
- State agency plans, policies, and programs would be modified to encourage continued farm operations.
- Limitations would be placed on the exercise of eminent domain and public capital expenditures which conflict with farm operations.
- Restrictions would be placed on the imposition of benefit assessments, or special levies, for extension of public services.
- Health, safety, environmental, and land use regulations would recognize agriculture as the primary use.

Recommendation: The state should adopt a policy which encourages agricultural land use.

The state has a responsibility to clarify its agricultural land use policy, not only in agricultural districts, but throughout the state. The fact that a district has not been created in a particular area

Agriculture is important to Ohio's future.

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does not imply that state actions can proceed without concern for productive agricultural land. The state policy would prevent the state's capital investments from adversely affecting productive agricultural areas, and would also provide a basis for reviewing agricultural district petitions and identifying the impact of state government on long-term agricultural interests.

The state agricultural policy would contain the following elements:

- identification of agricultural lands which are threatened by conversion to other uses
- estimation of the economic impact resulting from the loss of agricultural land
- indication of how the state proposes to guide its actions to preserve agricultural land

The Governor would endorse the policy and send it to the General Assembly for review. The adopted policy would be reviewed every two years.

Recommendation: The primary application of agricultural use value assessment should be in agricultural districts.

Individual landowners willing to make the eight year commitment to farming through the creation

of an agricultural district would be the primary recipients of the agricultural use value assessments, the property tax benefit for agricultural land. Individuals currently receiving use value assessments would continue to receive such benefits without creation of an agricultural district. Landowners unable to establish a district because their land does not meet the size or configuration requirements, or their petition has been rejected, would still be eligible for use value assessment.

Recommendation: Zoning enabling statutes should authorize the recognition of agriculture as a principal use.

Current zoning techniques rely heavily upon density provisions to discourage non-farm uses in agricultural areas. Scattered low-density development in agricultural areas is not always effective in achieving a compatible mixture of non-farm and agricultural uses.

Zoning enabling statutes would be amended to authorize the regulation of non-farm uses in agricultural areas. Non-farm uses would be regulated to reduce nuisance conflicts with farm operations. Non-farm uses not directly associated with agriculture would be permitted in agricultural zones only to the extent that they are consistent with long-term farm operations.

Regulating Large-Scale Development

Public or private development in a community may have impacts beyond the boundaries of the community. Major developments such as a metropolitan airport, large residential subdivision, or smaller developments located on the edge of a political jurisdiction, affect the development pattern in many communities. The scale of develop-

ment has increased to serve large numbers of people. Large-scale developments are important in shaping future development patterns and public service investments, and have a large impact on the quality of life in urban areas.

Based on a review of public concerns regarding large-scale development, the following findings are made.

- Affected citizens and local officials may have no voice in the review and approval of large-scale developments.

A single municipality, township, or county has the sole authority to review, evaluate, negotiate, and

Large-scale developments shape future development patterns.

Ohio Conservation Foundation

finally approve the zoning for a large-scale development. Local zoning is the principal regulation concerned with the location of specific land uses in the context of the overall community development pattern. Citizens affected by the development decision and represented by a different jurisdiction, have no voice in the review and approval of large-scale development although they may be affected by the development approval. Increased traffic congestion, stormwater drainage problems, and other consequences may result and citizens may be required to support the cost of new or improved public service facilities.

- There is no provision requiring an evaluation of the impacts of a large-scale development.

No local agency is responsible for evaluating large-scale developments affecting several local jurisdictions. As a result, public debate and review of proposed large-scale developments frequently rely more upon emotion than fact. Specific adjustments to the proposal to reduce the negative impacts on neighboring jurisdictions are not made, since a responsible local agency has not prepared an estimate of the impacts of the development.

- Large-scale developments are subject to an inef-

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External effects of large-scale developments are important.

fective, costly, and time-consuming series of separate reviews and approvals.

Both public and private large-scale developments attract considerable public attention. The location of a major shopping center, new airport, or sewage treatment plant frequently becomes a widely-debated land use issue. While a single local jurisdiction may approve the zoning, as many as six to ten separate state and local authorities, each dealing with different aspects of the project, may also be required to review the project. Existing statutes lead to a confusing, costly, and time-consuming series of separate reviews and approvals. The controversy and importance surrounding large-scale development prompts authorities to conduct lengthy and extensive reviews for approval, requiring a wide variety of information from the project sponsors. These separate reviews frequently reach different conclusions concerning the merits of the proposals, and approval decisions are delayed while separate authorities wait for each other's actions.

Large-scale developments often require immediate and future public capital investments for services such as schools, water and sewer lines, and waste treatment plants. These improvements are financed by state agencies, special districts, counties, townships, and municipalities. Review and approval of large-scale development frequently occurs without adequate consideration of these public capital investments. Large-scale developments involve complex decisions with multi-jurisdictional impact. Many small units of local government do not have the resources to finance or undertake adequate technical evaluations of large-scale developments.

There is a certain irony in the current practice of regulating large-scale development. On the one hand, the far-reaching impact of large-scale developments are not evaluated, and some communities affected by such development have no voice in the approval process. On the other hand, large-scale developments are currently subject to a

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Large-scale developments require expanded public services.

variety of separate reviews and approvals for health, construction, engineering, access and other design standards.

Improving public regulation of large-scale developments requires the consolidation of existing separate project reviews into a single review which considers the external effects of the project and provides an opportunity for participation by affected jurisdictions. The current delegation of authority for regulatory decisions need not be altered, however, a joint review by all concerned would foster a cooperative and consistent set of decisions.

Recommendation: A single, uniform regulatory process for large-scale development should be established by the General Assembly.

Proposed developments, defined by specific statutory criteria, which have multi-jurisdictional effects, would be subject to the regulatory process. The local government in the project area would notify the areawide planning agency of a large-scale development proposal. Where no areawide agency exists, the countywide planning commission would be notified. The planning agency would notify other local governments of the proposed development. When the areawide agency receives

notice of the proposed development, other local governments may request to participate in the review with the public authorities responsible for approving the development. Representatives of regulatory agencies and affected local governments would form a temporary project advisory committee to conduct the review. The areawide or countywide planning agency would be required to prepare a factual statement of the impact of the development.

In cooperation with the developer, the project advisory committee would be responsible for completing a single, standard application form, consolidating the information required for local and state permits. The single application would eliminate the overlapping and varied requirements for project description, background information, and impact data currently required by many separate permit authorities.

The completed application would include an estimate of the multi-jurisdictional effects of the project, including the costs and sources of revenue for any public improvements. Final responsibility for evaluating and estimating these impacts would rest with the areawide planning agency. The project advisory committee would conduct a public hearing.

Separate approval authorities would simultaneously review the standard application form, statement of impact, and recommendations of the project advisory committee. Each authority would retain responsibility for making a final determination on individual permits. Specific time periods would be established within which the project advisory committee must make its recommendations and final approval decisions.

There are three advantages to a single, cooperative review by affected local governments and authorities responsible for approvals. First, a single review consolidates the resources and expertise

brought to the review and expedites approval decisions by eliminating multiple reviews. Second, a carefully conducted review provides a publicly accountable procedure in which units of local government, regulatory agencies, and project sponsors are responsible for estimating the effects of the proposed development. Finally, simultaneous and cooperative review fosters mutually agreed upon decisions which are consistent among the regulatory authorities.

Recommendation: The review and approval of large-scale developments should be subject to administrative appeal.

The developer, local governments, agencies represented on the project advisory committee, and the areawide planning agency would each have authority to appeal the issuance or denial of the required approval. Appeals would be taken to the state-local government commission. The commission's authority would be limited to the issuance of specific findings concerning the factual statement of impact, procedural requirements, and permit decisions. The commission could order the preparation of a new statement of impact or the remedy of procedural errors. Administrative appeal would be subject to due process in the courts.

This administrative appeals procedure differs in several ways from the current practice of individual appeals of regulatory actions in common pleas court. First, the statement of impact and recommendations of the project advisory committee are directly subject to review. Second, the administrative appeal would involve a statewide commission which would provide uniformity in individual rulings. Administrative appeal acts as a check to ensure that the procedures are properly carried out within an appropriate time period. The administrative appeals procedure provides both local governments and state agencies with an opportunity to obtain an independent ruling which balances state and local interests.

Flood hazard areas require special regulation.

Ohio Department of Natural Resources

Protecting Critical Resource Areas

Each of Ohio's counties contains critical resource areas which are environmentally significant to the future growth of the state. Many of these areas are threatened by changing land use patterns and the pressures of continuous population shifts. It is imperative to identify and protect these areas. The Committee has identified seven categories of critical resource areas: aquifer recharge areas, flood hazard areas, geologic hazard areas, mineral resource areas, significant natural areas, scenic river corridors, and wetlands. Based upon studies of each of these categories, the Committee makes the following findings.

- Critical resource areas contribute to the quality of life and growth in Ohio.

Critical resource areas provide our water supply and valuable minerals such as sand and gravel. They also support wildlife and contribute to the aesthetic qualities of the landscape. These areas are an integral part of the attractiveness of our state for growth and development.

- Federal measures to protect critical areas have been ineffective.

In the absence of a cooperative state-local procedure for protecting critical resource areas, numerous federal measures have been introduced to require protection of critical areas. Recent measures include federal flood insurance, conditions of federal grants, and special permits for wetlands. While federal statutes are intended to protect critical areas, enforcement is erratic and dependent upon the exercise of state and local responsibilities. In many cases these federal statutes have caused considerable confusion, misunderstanding, and hurried attempts by state and local government to achieve compliance without a workable procedure.

- A cooperative state-local protection procedure is required.

Local land use planning and regulatory procedures are the primary public tools for protecting critical resource areas from incompatible development. State statutes have vested primary responsibility for the identification, inventory, and analysis of critical resource areas with the Ohio Department of Natural Resources. No formal statutory procedure links the responsibilities of local governments and the Department of Natural Resources.

- The unique features of each critical resource area

Minerals are among Ohio's critical resources.

Ohio Conservation Foundation

determine the variety of techniques providing the necessary protection.

All critical resource areas need not be maintained in their natural state, or exclude all types of development. Development in or near an aquifer recharge area may be permitted provided its type and intensity do not reduce the rate of water absorption which is necessary to maintain the needed water supply, or withdraw water resources at a more rapid rate than the recharge capability. Each critical resource area must be evaluated to identify its unique features, and determine the most suitable types of protection techniques. A variety of techniques may be used including development regulations such as zoning, subdivision regulations, conservation easements, or direct acquisition.

A cooperative process is needed between state and local governments to identify critical resource areas, evaluate their unique features, and select protection techniques to be implemented by units of local government.

Recommendation: Protection of critical resource areas should begin with nominations by the countywide planning commission.

The countywide planning commission would nominate specific areas. Townships, municipalities,

Wetlands support wildlife and serve many other purposes.

Ohio Department of Natural Resources

counties, the Ohio Department of Natural Resources, and private citizens would propose areas for consideration by the countywide planning commission. Those areas nominated by the commission would be consistent with an adopted countywide general plan. Nomination would be made prior to, or after the adoption of the general plan.

Recommendation: The Ohio Department of Natural Resources should evaluate areas nominated by a countywide planning commission.

The Department of Natural Resources would prepare nomination and designation criteria, as well as critical area management guidelines. The Department would evaluate nominated areas using these criteria. The existing Ohio Capability Analysis Program developed by the Department of Natural Resources would be used in this evaluation. This program organizes, maps, and analyzes the variety of land resource information collected by state agencies. The evaluation by the Department of Natural Resources would include recommendations concerning the need for designation and measures required for protection of the critical resource area.

Recommendation: The countywide planning commission should have the authority to designate critical areas for special protection.

After completion of the evaluation, a public hearing would be conducted on the advisability of designating a specific critical resource area. Prior to the hearing, the Department of Natural Resource's evaluation of the area would be made available to the public. The countywide planning commission would make the final decision on the designation of the nominated critical resource area. This decision would reflect the evaluation by the Department of Natural Resources and reviews by citizens and affected landowners.

Recommendation: The countywide planning commission should recommend measures for the protection of designated critical areas.

The designation of critical resource areas would be a cooperative decision made by units of local government. The countywide planning commission would have the responsibility for recommending the kind of protection needed in critical resource areas. Measures for protecting these areas would include local regulatory measures, as well as conservation easements and direct acquisition. Local governments with zoning, subdivision, or building controls would adopt and continue to implement any regulatory measures necessary for protection.

Protection of critical resources is important to the quality of life.

Ohio Department of Natural Resources

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